IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

HON'BLE SMT JUSTICE T.MEENA KUMARI

and
HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

WRIT APPEAL Nos. 1489 and 1758 of 1999

-

Writ Appeal No. 1489 of 1999

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 10/08/1999 in WP No.: 8061 OF 1991 on the file of the High Court.)

Between:

Miss. Ummul Barkat W/o. Mr. Mujeeb Hashmi
Drugs Standardisation Research Unit,

Central Research Institute for Unani Medicine, Erragadda, Hyderabad.

..... APPELLANT

AND

1 Central Research Institute for Unani Medicine Non-Gazetted Employees Union (Regd.No.B-1885/90) Rep.by its Secretary,

Sri Nizamuz Zafar Khan Hyderabad.
2 Smt. Atiya Rahna W/o.Khaja Asif Mohiuddin
Drugs Standardisation Research Unit,

Central Research Institute for Unani Medicine, Hyderabad.
3 Union of India Rep. by its Secretary, Ministry of Health and Family Welfare, Govt. of India Central Secretariat, New Delhi.
4 Makim M.A.Razzack Director (Retd.)
Central Council for Research in Unani Medicine,

R/o.C-62, Nizamuddin Estate, New Delhi.

5 Dr. Mrs. Ummul Fazal Deputy Director (Tech.) and Director Incharge
Central Council for Research in Unani Medicine,

Panchashil Shopping Centre, New Delhi.
6 Hakim S.J.Hussain Deputy Director(incharge)

Central Research Institute for Unani Medicine and Project Officer,

Drugs Standardisation Research Unit, Erragadda,

Opp:to ESI Hospital,Hyderabad.
7 Cenral Council for Research in Unani Medicine Rep.by its

Director,Jawaharlal Nehru Bharatiya Chikisa Avum
Anusanthan Bhavan 5th Floor,No.61-65,Institutional Area
Opp:D.Block,Janakpuri New Delhi.

.....RESPONDENTS

Counsel for the Appellant: MR.P. KRISHNA REDDY

Counsel for the Respondents.: MR.A.GIRIDHAR RAO

Mr D. VIJAYA KUMAR

Counsel for the Respondent No.2: MR P BALAKRISHNA MURTHY
MR T. LAKSHMINARAYANA

MR A. RAJASEKHARA REDDY

Counsel for the Respondent No.3: MR T. RAMAKRISHNA RAO

*Form-NIC-OGS/WA {**CHP**}*

WRIT APPEAL NO : 1758 of 1999

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 10/08/1991 in WP NO : 8061 OF 1991 on the file of the High Court.)

Between:

Central Council for Research in Unami Medicine Rep.by its Director,Jawaharlal Nehru Bharatiya Chikitsa Ayum
Anusanthan Bhavan 5th Floor, No.61-65
Institutional Area D-Block,Janakapuri,New Delhi.

..... APPELLANT

AND

1 Central Research Institute for Unami Medicine Non-Gazetted

Employees Union (Regd.No.B-1885/90)
Rep. by its Secretary Sri Nizamur Zafar Khan

2 Smt. Atiya Rchana W/o.Asif Mohiuddin
D.S.R.U.Central Research Institute of Unani Medicine Hyderabad
R/o.Hyderabad.
3 Union of India Rep.by its Secretary,Ministry of Health & Family

Welfare, Govt.of India Central Secretariat
New Delhi.
4 Hakim M.A.Razzack.Director (Retd) Central Council for Research in Unani Medicine R/o.C-62,Nizamuddin Estate,New Delhi.
5 Dr.(Mrs) Ummul Fazal,Dy.Director Incharge Central Institute of Research in Unani Medicine Panchasheel Shopping Centre

New Delhi.
6 Hakim S.J.Hussain, Dy.Director Incharge Central Research Institute

for Unani Medicine & Project Officer,Drug Standardisation Research Unit Erragadda Opp: to ESI Hospital Hyderabad.
7 Miss Ummul Barkath Research Officer (Chem) Drugs Standardisation

Research Unit,Central Research Institute for Unani Medicine

Erragadda, Hyderabad.

.....RESPONDENTS

Counsel for the Appellant: MR.T.LAKSHMI NARAYANA

Counsel for the Respondents .: MR.A.GIRIDHAR RAO

MR P.BALAKRISHNA MURTHY

The Court made the following :

*Form-NIC-OGS/WA {**CHP**}*

COMMON JUDGMENT(per Hon'ble Smt Justice T Meena Kumari) **:**

These two appeals arise out of the single judgment dated 10.8.1999 passed by the learned single Judge of this Court in WP No.8061/91 filed by the Central Research Institute for Unani Medicine Non-Gazetted employees Union, represented by its Secretary and one Smt Atiya Rehna.

Aggrieved by the above order in the writ petition, the 5th respondent therein filed W.A. No. 1489 of 1999 and the 6th respondent therein filed W.A.No. 1758 of 1999.

The main grievance in the writ petition was that the appointment of the 5th respondent as a Research Officer (Chemistry) in the 6th respondent organization

was questioned firstly on the ground that she is not qualified to hold the said post because of her educational qualifications as she did not possess Post-graduate degree in the concerned discipline and secondly on the ground that the 2nd and 3rd respondents, who are the directors of the Institution by then, being the uncle and aunt of the 5th respondent helped her in getting the post and as such the selection itself is vitiated. The above writ petition has been countered by the 5th respondent stating that her Diploma of Associateship of the Institution of Chemists(India) has been recognized by the Government of India as that of Post-graduate course in the concerned discipline, as was published in Gazette No. F.L8-36/57 T.5 dt. 19-8-1958.

It is the further case of the 5th respondent that since the other 2 incumbents, who were selected along with her during the said selection, were not made as parties to the writ petition, the same is liable to be dismissed for non-joinder of the parties. Having taken into consideration her qualification and experience, she was selected for the above post. The 2nd petitioner who was not selected, cannot have any grievance as she is not in the panel also.

The learned single Judge after going though the records found that the Director as the Chairman of the selection committee has nominated two experts i.e., Dr M.S.Y.Khan and Prof. M.R. Parthasarathy, University of Delhi, as members of the committee for selecting the candidates on 19-9-1991 and he has approved the list of recommended candidates including his niece i.e., the 5th respondent and issued appointments on 20-2-1991 and retired on attaining the age of superannuation on 28-2-1991. He further observed that the 5th respondent having not denied the relationship as alleged by the petitioners, it has to be construed that the fact remains that the then retired director (R-2) having been a relative of the 5th respondent ought not to have participated in the process of selection by approving the list of recommended candidates.

The learned single judge having found fault with the process of selection has observed that the second respondent in the writ petition played a dominant role for selecting and appointing the 5th respondent as the Research Officer(Chemistry). The learned single Judge having observed so, has found that the petitioners cannot be blamed if the writ petition could not be disposed of within a reasonable time and also observed that the selections were made in 1991 and the selected candidates

including the 5th respondent are functioning in their respective posts. However, having found that the entire selection process has been vitiated, he has chosen to set aside the appointment of 5th respondent alone as Research Officer (Chemistry) and directed the 6th respondent organization to issue a fresh notification for selection and recruitment in the resultant vacancies and allowed the writ petition with the above observations. Aggrieved by the said order, these two appeals are filed.

Learned counsel for the appellant in WA 1489/99 i.e., 5th respondent in the writ petition argued before this Court that in pursuance of the notification, the appellant herein applied for the post of Research Officer (Chemistry) and as she is having a Post- graduate diploma which is equivalent to that of P.G. course as recognized by the Central Government of India through the gazette notification, her educational qualifications cannot be find fault. Learned counsel has further contended that the writ petition is liable to be dismissed on account of non-joinder of parties as the learned single Judge has observed that a fresh notification has to be issued in view of the fact that the other 2 candidates who were selected are not made as parties. Under the above circumstances, a fresh notification cannot be issued for the post of Research Officer (Chemistry), which the appellant is presently holding. Hence, he sought to allow the appeal.

On the other hand the learned Counsel appearing on behalf of the 2nd respondent contended that since the selection was held to be vitiated the 5th respondent in the writ petition cannot get any benefit and the appeal filed by her will not sustain.

Heard both the learned counsel at length and perused the order under challenge. A close reading of the impugned order reveals that even though there is no denial by the 5th respondent with regard to the relationship she had with the then Directors i.e., respondents 2 & 3 in the writ petition, basing on the material placed before us it has to be observed that the 2nd & 3rd respondents who happened to be the maternal uncle and auntie of the 5th respondent were working in the same organization and the 2nd respondent had committed an irregularity in issuing the appointment orders even though he was not a member to the selection committee. But the fact remains that the 5th respondent has been continuously working in the

said post right from 1992 onwards. In view of the fact that the 5th respondent has been working for such a long standing 13 years and in view of the arguments advanced before us by the learned counsel for the respondents 1 & 2 that she is not qualified to the post of the Research Officer (Chemistry) and in view of the qualification that she being the Post-graduate diploma holder, we are of the opinion that the controversy need not be gone into as to the qualification at this juncture since the appellant-5th respondent has been working in the said post without any break for the last 13 years. Further, after hearing arguments on both sides, taking into consideration the fact that the 2nd respondent could not prove her case how she was prejudiced by setting aside the selection process which was conducted in 1992, and in the absence of such material before us, we deem it appropriate to modify the order of the learned single judge to the effect that the 5th respondent shall be reverted to the next lower post with the highest scale of pay attached to it.

For the aforementioned reasons and under the circumstances of the case, we direct the 3rd respondent to revert the appellant in WA No. 1489 of 1999 (5th respondent in W.P.) to the post which is lower to the present post of Research Officer (Chemistry), fixing her pay in the highest pay scale attached to such post, with all attendant benefits treating her service as that of she has worked in that lower post for the purpose of pension till her superannuation. We make it clear that any observations made herein against her should not be taken into consideration for her future promotions, if she is otherwise eligible. We also make it clear that while reverting the appellant to the next lower post, the difference of salary shall not be recovered from her.

With the above observations, the writ appeals are disposed of. No costs.

T. MEENA KUMARI, J

Dt 16/6/2005

P. LAKSHMANA REDDY, J

HON'BLE SMT JUSTICE T.MEENA KUMARI

and

HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

WRIT APPEAL NO : 1489 & 1758 of 1999

(Common Judgment of the Division Bench delivered by

Hon'ble Smt Justice T. Meena Kumari)

16th June 2005

To

1. The Secretary, Central Research Institute for Unani Medicine Non-Gazetted Employees Union (Regd.No.B-1885/90),

Sri Nizamuz Zafar Khan Hyderabad.
2 The Director, Cenral Council for Research in Unani Medicine

Jawaharlal Nehru Bharatiya Chikisa Avum
Anusanthan Bhavan 5th Floor,No.61-65,Institutional Area
Opp: D.Block, Janakpuri, New Delhi.

3 The Secretary, Union of India, Ministry of Health and Family Welfare, Govt. of India Central Secretariat, New Delhi.
4 Two CD copies.